

General Information Letter: Based on the facts shown in the request, no ruling can be issued stating that the taxpayer has no nexus with Illinois.

June 9, 1999

Dear:

This is in response to your letter dated April 15, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

I would like rulings on the following situations:

1. xxxxxxxxxxxxxxxxx, a Foreign Corporation, is considering supplying Architectural and Engineering Services to clients whose corporate headquarters may be located either in your state or outside your state. The project site is located within your state. All our employees will be located in xxxxxxxxxxxxxxxx, no one will enter your state. We will not have an office or other property in your state. We will not solicit sales within your state.

In this scenario, are we "transacting business" in your state? Are we subject to your state's income tax, franchise tax, sales/use tax or any other tax?

2. Same scenario, except an employee will enter your state to provide Contract Administration Services in the form of one or more visits to the project site. Actual time at the site will vary, but I estimate that it will range from two to four hours per visit.

In this scenario, are we "transacting business" in your state? Are we subject to your state's income tax, franchise tax, sales/use tax or any other tax?

Response

The Illinois Department of Revenue does not provide prospective determinations of nexus for multi-state businesses. A judgment on nexus is made only in the context of an audit, where relevant facts and circumstances can be gathered to the satisfaction of a revenue official. In anticipation of that eventuality, the taxpayer is expected to adhere to current principles of law.

Illinois statutes are written in such a way that "doing business" for taxation nexus in this state is determined by the prevailing principles of jurisprudence under the commerce and due process clauses of the U. S. Constitution. The leading case in the area is *Quill v. North Dakota*, 112 S. Ct. 1904 (1992), which found that a state could not tax a business whose only activity there is selling by mail order. In general, some physical presence or activity within a state is required to establish taxation nexus. Your two scenarios obviously differ on

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just that point and the ultimate determination would depend upon its nature and amount.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax